

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Licensure and Practice; Telemedicine (LAC 46:XLV.408 and Chapter 75)

Pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "Board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended during the 2008 Session of the Louisiana Legislature by Acts 2008, Number 850, R.S. 37:1262(4) and 37:1276.1, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the board has adopted LAC Title 46:XLV, Subpart 2, Chapter 3, Subchapter H, Section 408 and Subpart 3, Chapter 75, Subchapter A, Sections 7501-7521 to govern the practice of all physicians who utilize telemedicine in this state.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Profession

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Qualifications. A physician who does not hold a license to practice medicine in Louisiana may not engage in the practice of medicine across state lines in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. possess the qualifications for licensing prescribed by §311 of these rules;
2. possess an unrestricted license to practice medicine issued by the medical licensing authority of a state other than Louisiana (whether allopathic or osteopathic);
3. not be enrolled in a medical residency or other post graduate medical training program. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where the applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice;
4. have attended the board's physician orientation program described in §449 of these rules or completed it online; and
5. have completed a board-approved application and satisfied the applicable fee.

B. Permit Denial. The board may deny or refuse to issue a telemedicine permit to an otherwise eligible applicant:

1. who does not satisfy the qualifications prescribed by this Chapter;
2. for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq.;
3. who has been the subject of previous disciplinary action by the medical licensing authority of any state;
4. who is the subject of a pending investigation by the board, the medical licensing authority of another state or a federal agency;

5. who has been denied, had suspended, revoked, restricted or relinquished staff or clinical privileges at a hospital or institution while under investigation for, or as a result of, professional competency or conduct;

6. who has been, or is currently in the process of being denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to participation in any private, state, or federal health care insurance program; or

7. who voluntarily surrendered while under investigation by the issuing authority, or had suspended, revoked or restricted, his or her state or federal controlled substance permit or registration.

C. Applicant's Burden. The burden of satisfying the board as to the qualifications and eligibility of the applicant for a telemedicine permit shall be upon the applicant, who shall demonstrate and evidence such qualifications in the manner prescribed by and to the satisfaction of the board.

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Subchapter;
2. certification of the truthfulness and authenticity of all information, representations and/or documents contained in or submitted with the completed application;
3. a description of the manner of and the primary practice site from which telemedicine is to be utilized by the applicant;
4. acknowledgment that the applicant shall only utilize telemedicine in accordance with the telemedicine rules promulgated by the board in Chapter 75 of these rules and shall retain professional responsibility for the services provided to any patient by telemedicine;
5. criminal history record information;
6. such other information, acknowledgments and documentation as the board may require; and
7. a fee of \$150. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. Appearances. An applicant shall be required to appear before the board or its designee if the board has questions concerning the applicant's qualifications.

F. Effect of Application. The submission of an application pursuant to this Subchapter shall constitute and operate as an authorization and consent by the applicant to:

1. submit to the jurisdiction of the board in all matters set forth in the Act or any other applicable Louisiana law, as well as the board's rules;
2. produce medical or other documents, records, or materials and appear before the board upon written request; and
3. report to the board in writing within 30 days of any disciplinary action against the applicant's:
 - a. license to practice medicine in another state; or
 - b. federal or state registration or permit to prescribe, dispense or administer controlled substances or the voluntary surrender thereof while under investigation by the issuing authorities.

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or

the first day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine across state lines in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Medical Practice Act.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Department—The Louisiana Department of Health and Hospitals.

Medical Practice Act or the Act—R.S. 37:1261-92, as may from time to time be amended.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or telemedicine permit duly issued by the board.

Primary Practice Site—the location at which a physician spends the majority of time in the exercise of the privileges conferred by licensure or permit issued by the board.

State—any state of the United States, the District of Columbia and Puerto Rico.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes telemedicine for the purposes of this Part.

Telemedicine Permit—a permit issued by the board in accordance with Chapter 3 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7505. General Uses, Limitations

A. Telemedicine shall not be utilized by a physician with respect to any patient located in this state in the absence of a physician-patient relationship as provided in §7509 of these rules.

B. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means, shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7507. Prerequisite Conditions

A. Prior to utilizing telemedicine the physician shall ensure that:

1. he or she has access to those portions of the patient's medical record pertinent to the visit;
2. there exists appropriate support staff who:
 - a. are trained to conduct the visit by telemedicine;
 - b. are available to implement physician orders, identify where medical records generated by the visit are to be transmitted for future access, and provide or arrange back up, follow up, and emergency care to the patient; and
 - c. provide or arrange periodic testing and maintenance of all telemedicine equipment.

B. A licensed health care professional who can adequately and accurately assist with the requirements of §§7509 and 7511 of this Chapter shall be in the examination room with the patient at all times that the patient is receiving telemedicine services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7509. Providing Telemedicine Services; Records

A. Physicians who utilize telemedicine shall insure that a proper physician-patient relationship is established that at a minimum includes:

1. verification of the patient. Establishing that the person requesting the treatment is who the person claims to be;
2. evaluation. Conducting an appropriate evaluation of the patient, including review of any relevant history, laboratory or diagnostic studies, diagnoses, or other information deemed pertinent by the physician;
3. diagnosis. A diagnosis shall be established through the use of accepted medical practices including, but not limited to patient history, mental status and appropriate diagnostic and laboratory testing and fully documented in the patient's medical record. The diagnosis shall indicate the nature of the patient's disorder, illness, disease or condition and the reason for which treatment is being sought or provided;
4. treatment plan. The physician shall discuss with his or her patient the diagnosis, as well as the risks and benefits of appropriate treatment options, and establish a treatment plan

tailored to the needs of the patient. A treatment plan shall be established and fully documented in the patient's record; and

5. follow-up care. A plan for accessing follow-up care shall be provided to the patient in writing and documented in the patient's record.

B. Patient records generated by a physician conducting a telemedicine visit shall be maintained at the physician's primary practice site and at the location of the patient where such visit was conducted, or such other location as may be directed by the physician(s) responsible for the patient's care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7511. Informed Consent

A. In addition to any informed consent and right to privacy and confidentiality that may be required by state or federal law or regulation, a physician shall insure that each patient to whom he or she provides medical services by telemedicine is:

1. informed of the relationship between the physician and patient and the respective role of any other health care provider with respect to management of the patient; and

2. notified that he or she may decline to receive medical services by telemedicine and may withdraw from such care at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7513. Prohibitions

A. Telemedicine shall not be utilized to provide medical services to patients located in this state in the absence of medical licensure or a current telemedicine permit issued by the board and other than in compliance with the rules of this Chapter.

B. No physician shall utilize telemedicine:

1. for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

2. for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

3. to authorize or order the prescription, dispensation or administration of any amphetamine or narcotic, provided, however, that this limitation shall not apply to a physician who is currently certificated by a specialty board of the American Board of Medical Specialties or the American Osteopathic Association:

a. in the specialty of psychiatry from using amphetamines in the treatment of his or her patients suffering from attention deficit disorder; or

b. the American Society of Addiction Medicine in the subspecialty of addictive medicine from using narcotics in the treatment of an addictive disorder, provided such is permitted by and in conformity with all applicable federal and state laws and regulations; or

4. to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

C. A physician shall not utilize telemedicine except in the usual course and scope of his or her medical practice.

D. A non-Louisiana licensed physician who practices across state lines by virtue of a telemedicine permit issued by the board shall not:

1. open an office in this state;

2. meet with patients in this state;

3. receive telephone calls in this state from patients; or

4. engage in the practice of medicine in this state beyond the limited authority conferred by his or her telemedicine permit.

E. No physician shall supervise, collaborate or consult with an allied health care provider located in this state via telemedicine unless he or she possesses a full and unrestricted license to practice medicine in this state and satisfies and complies with the prerequisites and requirements specified by all applicable laws and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7515. Exceptions

A. The following activities shall be exempt from the requirements of this Chapter:

1. furnishing medical assistance in case of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in Title 29 of the Louisiana Revised Statutes of 1950, or the board's rules;

2. issuance of emergency certificates in accordance with the provisions of R.S. 28:53; and

3. a true consultation, e.g., an informal consultation or second opinion, provided by an individual licensed to practice medicine in a state other than Louisiana, provided that the Louisiana physician receiving the opinion is personally responsible to the patient for the primary diagnosis and any testing and treatment provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7517. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed to constitute unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), and may provide just cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician or applicant culpable of such violation, or for such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7519. Action against Permit

A. For noncompliance with any of the provisions of this Chapter, or upon a finding of the existence of any of the causes enumerated by R.S. 37:1285(A), the board may, in

addition to or in lieu of administrative proceedings provided by this Chapter, suspend, revoke, refuse to issue or impose probationary or other restrictions on any permit held or applied for by a physician or applicant culpable of such violation, or take such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7521. Unauthorized Practice

A. Any individual who utilizes telemedicine to practice medicine in this state in the absence of a medical license or a telemedicine permit duly issued by the board, shall be deemed to be engaged in the unauthorized practice of medicine and subject to the civil, injunctive and criminal penalties prescribed by the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1290.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1535 (August 2009).

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